

01-JEFFERSON -  
BIRMINGHAM

☐ District Court ☒ Circuit Court

Case  
CV200

WADE TUCKER ET AL VS RICHARD M  
SCRUSHY ET AL

**CIVIL MOTION COVER SHEET**

Name of Filing Party: C001 - TUCKER WADE

Name, Address, and Telephone No. of Attorney or Party. If Not Represented.

JOHN SOMERVILLE  
11 OAK STREET  
BIRMINGHAM, AL 35213

Attorney Bar No.: SOM007

☒ Oral Arguments Requested

**TYPE OF MOTION**

**Motions Requiring Fee**

**Motions Not Requiring Fee**

- ☐ Default Judgment (\$50.00)  
Joinder in Other Party's Dispositive Motion (i.e.  
Summary Judgment, Judgment on the Pleadings, or  
other Dispositive Motion not pursuant to Rule 12(b))  
(\$50.00)
- ☐ Judgment on the Pleadings (\$50.00)
- ☐ Motion to Dismiss, or in the Alternative Summary  
Judgment(\$50.00)  
Renewed Dispositive Motion(Summary Judgment,  
Judgment on the Pleadings, or other Dispositive  
Motion not pursuant to Rule 12(b)) (\$50.00)
- ☐ Summary Judgment pursuant to Rule 56(\$50.00)
- ☐ Other \_\_\_\_\_  
pursuant to Rule \_\_\_\_\_ (\$50.00)
- \*Motion fees are enumerated in §12-19-71(a). Fees  
pursuant to Local Act are not included. Please contact the  
Clerk of the Court regarding applicable local fees.
- ☐ Local Court Costs \$ \_\_\_\_\_

- ☐ Add Party
- ☐ Amend
- ☐ Change of Venue/Transfer
- ☐ Compel
- ☐ Consolidation
- ☐ Continue
- ☐ Deposition
- ☐ Designate a Mediator
- ☐ Judgment as a Matter of Law (during Trial)
- ☐ Disburse Funds
- ☐ Extension of Time
- ☐ In Limine
- ☐ Joinder
- ☐ More Definite Statement
- ☐ Motion to Dismiss pursuant to Rule 12(b)
- ☐ New Trial
- ☐ Objection of Exemptions Claimed
- ☐ Pendente Lite
- ☐ Plaintiff's Motion to Dismiss
- ☐ Preliminary Injunction
- ☐ Protective Order
- ☐ Quash
- ☐ Release from Stay of Execution
- ☐ Sanctions
- ☐ Sever
- ☐ Special Practice in Alabama
- ☐ Stay
- ☒ Strike
- ☐ Supplement to Pending Motion
- ☐ Vacate or Modify
- ☐ Withdraw
- ☐ Other \_\_\_\_\_  
pursuant to Rule \_\_\_\_\_ (Subject to Filing Fee)

Check here if you have filed or are filing  
contemporaneously with this motion an Affidavit of  
Substantial Hardship ☐

Date:  
12/17/2007 5:31:23 PM

Signature of Attorney or Party:  
/s/ JOHN SOMERVILLE

**IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA  
 (HEALTHSOUTH CORPORATION 2002 DERIVATIVE LITIGATION)**

**WADE TUCKER, derivatively for the  
 Benefit of and on behalf of the Nominal  
 Defendant HealthSouth Corporation,**  
 Plaintiff,

-vs-

**RICHARD M. SCRUSHY, et al.,**  
 Defendants.

**CIVIL ACTION NO. CV-02-5212**

---

**UBS SECURITIES LLC,**  
 Counterclaim Plaintiff,

-vs-

**HEALTHSOUTH CORPORATION,**  
 Counterclaim Defendant.

**PLAINTIFF'S MOTION TO STRIKE UBS SECURITIES LLC'S  
 AMENDED ANSWER TO THE THIRD COMPLAINT AND  
 THE SUPPLEMENTAL AND FOURTH AMENDED COMPLAINT**

COMES NOW Plaintiff, Wade Tucker ("Plaintiff"), derivatively on behalf of the Nominal Defendant, HealthSouth Corporation and, pursuant to Alabama Rule of Civil Procedure 12(f), moves to strike UBS Securities LLC's ("UBS") Amended Answer to the Third Amended Complaint and the Supplemental and Fourth Amended Complaint as follows:

1. UBS's amendment is inconsistent with and contrary to UBS's prior representations that UBS Securities, LLC was the only proper party defendant with regard to Tucker's claims;

2. UBS's amendment is inconsistent with and contrary to UBS's prior representations that UBS Securities, LLC loaned money to MedCenterDirect.com ("MCDC");

3. UBS's amendment is an improper attempt by UBS to circumvent the rulings of this Court in the Modified Order Denying Motion to Dismiss Brought By UBS to the effect that UBS Securities, LLC is the only proper party defendant with regard to Tucker's claims;

4. UBS's amendment is an improper attempt by UBS to circumvent the rulings of this Court in the Modified Order Denying Motion to Dismiss Brought By UBS to the effect that all claims of UBS against HealthSouth should be litigated in this coordinated proceeding; and

5. UBS's amendment is an improper attempt by UBS to gain an unfair advantage in connection with this litigation and with litigation brought by UBS in New York State (litigation which should have been brought as a compulsory counterclaim here).

6. Tucker reserves the right to assert additional arguments, file additional materials and a file a Memorandum of Law in support of this Motion.

**NOTICE OF HEARING**

This motion has been set for hearing at 1:30 p.m. on January 23, 2008 before the Honorable Allwin E. Horn, III.

Done this 17<sup>th</sup> day of December, 2007.

/s/ John Q. Somerville  
One of the attorneys for Plaintiff, Wade  
Tucker

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and exact copy of the foregoing has been served on this the 17<sup>th</sup> day of December, 2007 by electronic means to the attorneys listed on Appendix 3 (shown below) pursuant to the Court's Order and by U.S. mail, postage prepaid, and properly addressed to the following:

**Appendix 3:**  
**All Counsel in *Tucker v. Scrushy***  
**Pending Before The Honorable Allwin E. Horn III**

<b><u>Party</u></b>	<b><u>Name of Person to Serve</u></b>	<b><u>Email Address</u></b>
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